

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM**

**OF
SHIPP'S LANDING, A CONDOMINIUM**

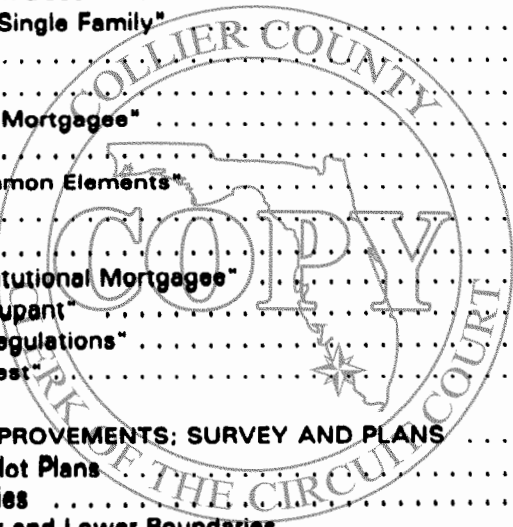


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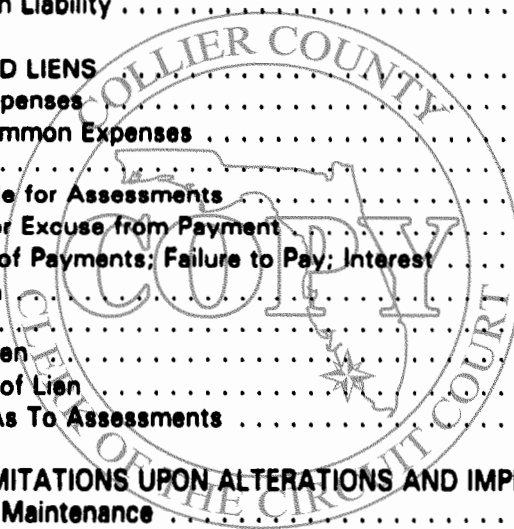
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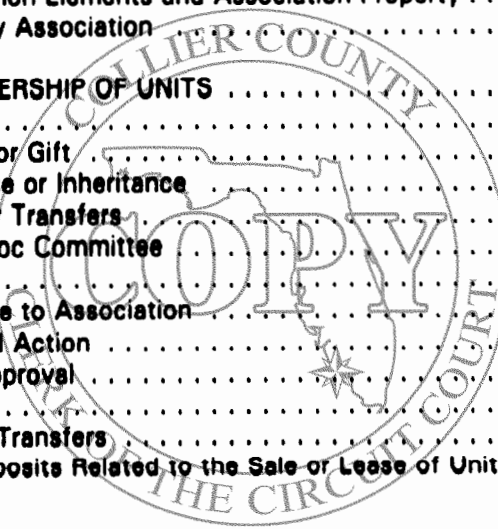
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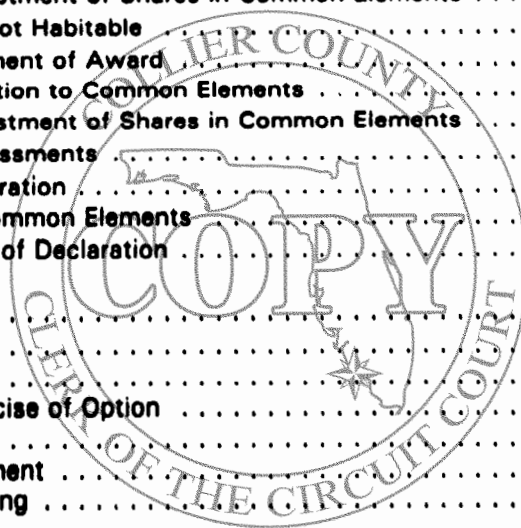
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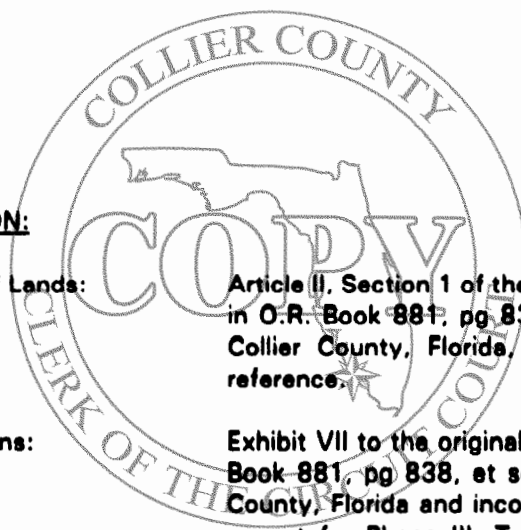


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EXHIBITS TO DECLARATION:

1. Legal Description of Lands: Article II, Section 1 of the original Declaration recorded in O.R. Book 881, pg 838, et seq, Public Records of Collier County, Florida, and incorporated herein by reference.
2. Survey and Plot Plans: Exhibit VII to the original Declaration recorded in O.R. Book 881, pg 838, et seq., Public Records of Collier County, Florida and incorporated herein by reference, except for Phase III, Typical Floor Plan - Type "C", Units "22" and "23", originally recorded at O.R. Book 881, page 950, Public Records of Collier County, Florida, as amended and re-recorded, and attached hereto as Exhibit "VII-1" to this Amended and Restated Declaration to show perimeter boundary adjustment caused by building repairs.
3. Parking Space Assignments: Exhibit "A" attached to this Amended and Restated Declaration.
4. Articles of Incorporation: Exhibit "B" to the Amended and Restated Declaration of Condominium recorded in O.R. Book 1516, page 2049, et seq., of the Public Records of Collier County, Florida, and incorporated herein by reference.
5. Amended and Restated Bylaws: Exhibit "C" attached to this Amended and Restated Declaration of Condominium.



NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION OF CONDOMINIUM.

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

SHIPP'S LANDING, A CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

That heretofore on September 3, 1980, the original Declaration of Condominium of Shipp's Landing, a Condominium, (the "Condominium") was recorded in O.R. Book 881, at Page 838, et seq., as amended and restated by that certain Amended and Restated Declaration of Condominium of Shipp's Landing, a Condominium, dated March 14, 1990, and recorded in O.R. Book 1516, at page 2049, et seq., all of the Public Records of Collier County, Florida. That Declaration of Condominium and all of its recorded exhibits, as previously amended and restated, are hereby further amended in part, and restated in their entirety as amended herein.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by Shipp's Landing Condominium Association, Inc., a Florida corporation not for profit, (the "Association"). The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to Chapter 718, Florida Statutes (the "Condominium Act"). No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium units. The acquisition of title to a unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.
2. **NAME AND ADDRESS:** The name of this Condominium is Shipp's Landing, a Condominium, and its street address is 1090 South Collier Boulevard, Marco Island, Florida 34145.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration, (the "Land") is legally described at Article II, Section 1, of the original Declaration and incorporated by reference herein.
4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (the "Condominium Act"), unless the context otherwise requires.
 - 4.1 **"Assessment"** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.
 - 4.2 **"Association"** means Shipp's Landing Condominium Association, Inc., a Florida not-for-profit corporation, the entity responsible for the management and operation of this Condominium.
 - 4.3 **"Association Property"** means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

- 4.4 **"Board of Directors"** or **"Board"** means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".
- 4.5 **"Condominium Documents"** means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.
- 4.6 **"Family"** or **"Single Family"** shall refer to any one of the following:
- (A) One natural person.
 - (B) Two or more natural persons who regularly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
 - (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.
- 4.7 **"Fixtures"** means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.
- 4.8 **"Guest"** means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.
- 4.9 **"Institutional Mortgagees"** means the mortgagee (or its assignee) of a mortgage against a Condominium unit, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Condominium unit which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.
- 4.10 **"Lease"** means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.
- 4.11 **"Limited Common Elements"** means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.
- 4.12 **"Occupy"**, when used in connection with a unit, means the act of staying overnight in a unit. **"Occupant"** is a person who occupies a unit.
- 4.13 **"Owner"** has the same meaning as "unit owner" as defined in the Condominium Act.

- 4.14 **"Primary Institutional Mortgagee"** means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.
- 4.15 **"Primary Occupant"** means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- 4.16 **"Rules and Regulations"** means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.
- 4.17 **"Voting Interest"** means and refers to the arrangement established in the Condominium documents by which the owners of each unit collectively are entitled to vote in Association matters. There are 206 units, so the total number of voting interests is 206 votes. The members of the Association are entitled to one vote for each unit owned as set forth in Section 2.2 of the Bylaws.

5. **DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:**

- 5.1 **Survey and Plot Plans.** Attached to the original Declaration as Exhibit VII, and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions. As depicted in Exhibit VII, the Condominium was developed in three phases. Phase One contained 54 units, Phase Two contained 48 units and Phase Three contained 104 units. The term "phase" as used in this Declaration and its exhibits shall refer to the real property originally comprising a separate phase of the Condominium, as set forth in Exhibit VII.
- 5.2 **Unit Boundaries.** Each unit shall include that part of the building that lies within the following boundaries:
- (A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
- (1) **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling of the unit.
 - (2) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) **Perimeter Boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the unit as shown in Exhibit VII incorporated by reference herein, extended to their intersections with each other and with the upper and lower boundaries.

- (C) **Interior Walls.** No part of the interior partition walls within an apartment shall be considered part of the boundary of a unit.
- (D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows and doors, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are excluded from the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit VII, incorporated by reference herein, shall control in determining the boundaries of a unit, except the provisions of 5.2(D) above shall control over Exhibit VII. Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

6. **CONDOMINIUM UNITS; APPURTENANCES AND USE:**

- 6.1 **Shares of Ownership.** The Condominium contains 206 units. The owner of each unit shall also own a 1/206 undivided share in the common elements and the common surplus.
- 6.2 **Appurtenances to Each Unit.** The owner of each unit shall have certain rights and own a certain interest in the Condominium property, including without limitation the following:
- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and the Bylaws of the Association.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "Condominium parcel".

- 6.3 **Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the Condominium property. No unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The foregoing is not intended to prohibit transfers of title to undivided shares of an entire Condominium unit. The use of the units, common elements and limited common elements shall be

governed by the Condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in Section 7 of the Bylaws.

7. COMMON ELEMENTS; EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to Condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.
- (F) Apartment 120, commonly referred to as the "Manager's Apartment".
- (G) Apartment 121, commonly referred to as the "Guest Room".
- (H) The boat dock facilities, which are leased to certain individual unit owners for their use subject to reasonable rules and regulations imposed by the Association for such usage
- (I) Notwithstanding any provision herein to the contrary, except for the voting requirements of Section 11.6 of this Declaration, the Association may, upon approval by the Board of Directors and without the necessity of further unit owner vote, construct and install covered parking facilities upon Phase One common element parking spaces with funds provided solely by certain unit owners and shall, as consideration for those funds and other such payments as the Board determines, lease those covered parking facilities to those unit owners on such terms and conditions as the Board of Directors determines appropriate. The covered parking facilities and the parking spaces shall not, however, become limited common elements, appurtenant to the units without the unanimous joinder and consent of all unit owners and lienholders in the condominium as required by state law.

7.2 Easements. Each of the following non-exclusive easements to each unit owner, to the Association and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services, is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium units. Any lien

encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) **Ingress and Egress.** Easements over the common elements for ingress to the Condominium property and to contiguous land.
- (B) **Utilities.** Easements through the common elements and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.
- (C) **Public Services.** Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the Condominium property.
- (D) **Right of Entry into Units.** In case of an emergency originating in or threatening any unit, or the common elements, or to protect, maintain, repair or replace the common elements, for pest control, and for other purposes permitted by law; regardless of whether the owner is present at the time, the Association has the right but not the duty to enter such unit for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate and to facilitate entry, the owner of each unit, if required by the Association, shall deposit under the control of the Association a key to the owner's unit, and shall not alter or install a lock which prevents access to an unoccupied unit. Any access shall be with prior notice where practical and with due respect for the owner's right to privacy and freedom from undue annoyance, and with appropriate precautions to protect the owner's property.
- (E) **Air Space.** There exists an exclusive easement for the use of the air space occupied by a Condominium unit as it exists at any particular time and as the unit may lawfully be altered.

7.3 **Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. **LIMITED COMMON ELEMENTS:**

8.1 **Description of Limited Common Elements.** Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant, are as described in this Declaration and its exhibits. The following common elements are hereby designated as limited common elements:

- (A) **Parking Spaces.** There have been designated certain parking spaces as limited common element. These parking spaces have been assigned to the exclusive use of specific units as identified in that certain document entitled "Shipp's Landing Condominium Association, Inc. Parking Space Assignments", which document is attached hereto and incorporated herein as

Exhibit "A". The cost of maintenance of all parking spaces shall be a common expense.

- (B) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit, except as otherwise provided in Section 11.2 below.
- (C) Others. Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights for parking may be exchanged between units or transferred to another unit as follows:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.
- (B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Collier County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

9. ASSOCIATION: The operation of the Condominium is by Shipp's Landing Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. The Articles of Incorporation of the Association recorded as Exhibit "B" to the Amended and Restated Declaration of Condominium dated March 14, 1990, a copy of which is attached hereto as Exhibit "B", and are hereby incorporated by reference herein.

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws attached hereto as Exhibit "C", as they may be amended from time to time.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium property and employ a Florida licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association

for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

- 9.4 **Membership.** The membership of the Association shall be the record owners of legal title to the units, as further provided in the Bylaws.
- 9.5 **Acts of the Association.** Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.
- 9.6 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium and Association property. The Association may impose fees for the use of common elements or Association property. Specifically, the Board of Directors may require deposits and may charge rental fees for the use of boat slips, as provided in the rules and regulations of the Association. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.
- 9.7 **Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by members or applicable government agencies or member's legal counsel at all reasonable times. The right to inspect the records, including the right to make or obtain photocopies, is governed by the following conditions:
- (A) A member of the Association, or applicable government agencies, or the member's legal counsel, may inspect and copy records if the records to be inspected are described, in writing, in advance, with reasonable particularity; if the scope of the records sought to be inspected or copied is reasonably narrow and specific; and the written request for inspection and/or copying is received by the Association President or designee, at least five working days (excluding Saturdays, Sundays and legal holidays) before access is desired.
 - (B) Records may be inspected and/or copied at a time and location of the Association's choosing during normal business hours, excluding the Manager's lunch hour.
 - (C) It will be the Association's option as to whether to make and provide copies, and whether the copies will be made within a reasonable time later, taking into account other duties of available personnel.
 - (D) Copies made by the Association shall be charged for at the rate of 25 cents per page. Payment must be made before copies are turned over. Copies will not be mailed to any person requesting them unless the estimated costs of postage are paid in advance.

- (E) No inspection or copying will be permitted unless supervised by an Association representative, designated by the Board of Directors.
- (F) Records that are bound, stapled or otherwise organized or connected may not be disconnected or disassembled by the owner or his representative, and the records may not be marked, altered or written upon.
- (G) Neither an owner nor his representative may open, or remove records from, file cabinets, drawers, or other record repositories.
- (H) All unit owners have equal rights of inspection and copying. Only a single owner will be permitted to inspect the Association's records at any one time. No single owner will be permitted to monopolize the Association's resources available for inspection and copying, and no owner or representative will be permitted time for repeated inspections and copying until other unit owners seeking to do so have had their turns.
- (I) There shall be no inspection and copying of records that are excluded from owner inspection rights by the Condominium Act and Florida Administrative Code.

9.8 Purchase of Units. The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition and Disposition of Property. The Association has the power to acquire, encumber and convey property, both real and personal. The power to acquire and dispose of personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire or dispose of ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

9.11 Limitation on Liability. Notwithstanding its duty to maintain and repair Condominium and Association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

- 10.1 **Common Expenses.** Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and Association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.
- 10.2 **Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.
- 10.3 **Ownership.** Assessments and other funds collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.
- 10.4 **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a Condominium unit is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.
- 10.5 **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain mortgagees.
- 10.6 **Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before fifteen (15) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied to interest, late payment fees, court costs and attorney's fees, and delinquent assessments, in such manner as is provided by law. No payment by check is deemed received until the check has cleared. The determination of whether a payment is on time or is late will be determined by the postmark as affixed to the envelope.
- 10.7 **Acceleration.** If any special assessment or installment of a regular assessment as to a unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid

balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

- 10.8 **Lien.** The Association has a lien on each Condominium unit securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the name and address of the Association, the description of the Condominium unit, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the lien will be satisfied.
- 10.9 **Priority of Lien.** The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage to the extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by law. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.
- 10.10 **Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.
- 10.11 **Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the Condominium unit have been paid, and if not, provide an accounting of the total amounts due. Any person other than the owner who relies upon such certificate shall be protected thereby.
11. **MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:** Responsibility for the protection, maintenance, repair and replacement of the Condominium property, and restrictions on its alteration and improvement shall be as follows:
- 11.1 **Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and Association property (other than those limited common elements that are required elsewhere herein to be maintained by the unit owner). In addition, the Association shall be responsible for the protection, maintenance, repair and replacement of a unit, limited to the extent of such portions of the unit as contribute to the support of the building,

including but not limited to, perimeter walls, columns, and roofs. Also, wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common areas or other units. The Association shall also be responsible for the railings attached to the terraces, balconies and patios, for all units, as well as the screens attached to said terraces, balconies and patios for Phase One only. The cost is a common expense.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his unit and certain limited common elements. The owner's responsibilities include, without limitation, maintenance, repair and replacement of screens, windows and window glass; the interior side of the entrance door and all other doors within or affording access to the unit; the electrical, mechanical and plumbing fixtures and the outlets (including connections); appliances, heating and air-conditioning equipment, carpeting and other floor coverings, door and window hardware and locks, and other facilities or fixtures located or contained entirely within his unit which serve only his unit; and all interior, partition walls which do not form part of the boundary of the unit except as otherwise provided in 11.1 above with respect to the terraces, balconies and patios. However, any insurance proceeds paid to the Association with respect to any loss or damage within the unit covered by the Association's insurance, which loss would otherwise be borne by the unit owner, shall be paid to the unit owner. The unit owner shall also have the following responsibilities:

- (A) **Interior Decorating.** Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (B) **Flooring.** In all units above the ground floor, wall-to-wall carpeting is required in the living room, the dining room, the bedrooms and/or den. Unit owners may, at their discretion, install a substitute floor covering in all other areas including, at their option, a tile or other substitute floor covering border between the carpeting and baseboards or sliding glass doors of rooms otherwise required to have wall-to-wall carpeting. All substitute floor covering is required to be installed in accordance with the specifications adopted by the Board of Directors. Appropriate sound-deadening underlayment is to be utilized and installed only after receiving prior written approval of the Board. The Board may delegate the approval of sound-deadening installation to the Association Manager. Any non-conforming substitute floor covering installed shall, upon sale or transfer of the unit, be brought into compliance with this provision.

Acceptable balcony floor coverings shall be properly installed ceramic tile over a Board approved waterproofing membrane or a Board approved decorative coating over the approved membrane. Balcony floor coverings of other types of materials already in place may stay until either repairs to the balcony are required (per engineering inspections) or replacement the covering is needed or desired, at which time only the above two acceptable balcony floor coverings may be installed. No terrace, balcony, or patio may be carpeted or covered in any way without the prior written approval of the Board of Directors.

- (C) **Window Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, shutters, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, including enclosure of any terrace, balcony or patio, shall be subject to approval by the Board of Directors.
- (D) **Modifications and Alterations.** If a unit owner makes any modifications, installations or additions to his unit, the owner of the unit and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of maintaining or repairing any damage to the common elements resulting from such modifications, installations or additions.
- (E) **Use of Licensed and Insured Contractors.** Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, the owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and insured under a general liability policy with limits of liability of no less than \$250,000.00 to \$500,000.00, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurer. A copy of the general liability policy shall be provided to the Association.

11.3 Bulk Cable Television/Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance solely for kitchen appliances, water heaters and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the total voting interest in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner. Further, if there shall become available to the Association a program for the bulk purchase of cable television which the Board of Directors determine is in the best interest of the Association, then by a majority vote of the Board of Directors, the Association may enter into a contract for bulk rate cable services pursuant to the Condominium Act; the expense for which services shall be a common expense of the Association.

11.4 Combining Units. Nothing in this Declaration shall be construed as prohibiting the Board of Directors of the Association from authorizing the removal of any party wall

between two units to allow them to be used together as one unit. In that event, all assessments, voting rights and the share of common elements, shall be calculated as the units were originally designated in Exhibit VII, notwithstanding the fact that two (2) units are used as one, to the intent and purpose of the owner of such combined units shall be treated as the owner of as many units.

- 11.5 Alteration of Units or Limited Common Elements by Unit Owners.** No owner shall make or permit the making of any material alterations or substantial additions to his unit or the limited common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval.
- 11.6 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$25,000 in the aggregate in any fiscal year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.
- 11.7 Enforcement of Maintenance.** If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required in this Section 11, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.
- 11.8 Negligence; Damage Caused by Condition in Unit.** Each unit owner shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family, guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, Association property or property within other

units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.9 Association's Access to Units. The Association has an irrevocable right of access to each unit, during reasonable hours, when necessary for maintenance, repair or replacement of any common elements or portion of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to any common elements or to one or more units.

11.10 Pest Control. The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline to have such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

12. USE RESTRICTIONS: The use of the Condominium property shall be in accordance with the following provisions:

12.1 Units. Each unit shall at any time be occupied by only one family and its guests, as a residence and for no other purpose. The total number of overnight occupants in a unit is six (6). No business or commercial activity shall be conducted in or from any unit. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls, computer communications or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

12.2 Occupancy in Absence of Owner. If the owner and his family who permanently reside with him are absent, and the unit has not been leased, the owner may permit his unit to be occupied temporarily by his guests. When a unit is to be occupied by guests while the owner is not in residence, the owner shall, at least twenty-four (24) hours prior to the arrival of the guests, notify the Association of such fact, and shall give the name of all persons who will be permitted to temporarily occupy the unit. The ability of the owner to allow guest occupancy in his absence is a privilege, not a right, and the Board of Directors is empowered to deny such guest privileges to any unit owner who refuses or fails to give prior notice of guest occupancy or to accept full responsibility for controlling the conduct of his guests and seeing to it that such guests conduct themselves in full conformity to the covenants and rules applicable to the Condominium.

- 12.3 **Occupancy When Owner is Present.** There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit in the presence of the unit owner.
- 12.4 **Minors.** All occupants under eighteen (18) years of age shall conduct themselves in accordance with the Condominium documents, under parental or guardian supervision, to insure that they do not become a nuisance to other residents.
- 12.5 **Pets.** The keeping of pets of any kind or description within the Condominium is prohibited, except in the case of an owner who was keeping a pet in his unit as of April 7, 1989, but such owner may not replace said pet when it dies or is otherwise disposed of. Any pet permitted under this section must be leashed at all times while on the Condominium property outside of the unit. Any pet which becomes a nuisance to other residents or owners may be required to be removed from the premises.
- 12.6 **Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes a nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.
- 12.7 **Signs.** No person may post or display "For Sale", "For Rent", "Open House" or other similar signs anywhere on the Condominium common elements.
- 12.8 **Use of Common Elements.** The common elements shall not be obstructed, littered, defaced or misused in any manner. The common elements shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.
- 12.9 **Vehicles and Parking.** No trucks (except pickups used primarily as personal transportation) or commercial vehicles, campers, mobile homes, motor homes, motorcycles, boats, house trailers, boat trailers, or trailers of every other description, shall be permitted to be parked or stored at any place on the common elements unless approved by the Board of Directors. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial services. Automobiles shall be parked only in the parking spaces established for such purpose. Inoperable vehicles are not permitted to be stored or parked on the common elements. If an illegally parked vehicle is not removed from the Condominium property within 72 hours after notice to owner, said vehicle will be removed by towing at the owner's expense.
- 12.10 **Limitation on Number of Units.** In order to avoid creating a motel-like transient environment, and to foster stability in the community, to promote economic stability, and to encourage democratic principles of participation in Association affairs, no unit owner may own more than two (2) condominium units located anywhere within Shipp's Landing. For purposes of this paragraph, the term "unit owner" shall include a Family or Single Family, as defined in Section 4.6 above, a trust, corporation, partnership or other entity, or subsidiary or related entity, or any entity controlled by a unit owner.

13. **LEASING OF UNITS:** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit after receiving the approval of the Association. The lessee must be a natural person.

13.1 **Procedures.**

- (A) **Notice by the Unit Owner.** An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least fifteen (15) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval.
- (B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.
- (C) **Disapproval.** A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:
- (1) the unit owner is delinquent in the payment of assessments at the time the application is considered;
 - (2) the unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
 - (3) the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
 - (4) the application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
 - (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
 - (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
 - (7) the prospective lessee evidences a strong probability of financial irresponsibility;

- (8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
- (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or
- (10) the owner fails to give proper notice of his intention to lease his unit to the Board of Directors.
- (D) **Failure to Give Notice or Obtain Approval.** If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.
- (E) **Applications; Assessments.** Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Condominium assessments may not be delegated to the lessee.
- 13.2 **Term of Lease.** No unit may be leased for less than thirty (30) consecutive days.
- 13.3 **Subleasing.** No subleasing or assignment of lease rights by the lessee is allowed.
- 13.4 **Occupancy During Lease Term.** No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit.
- 13.5 **Occupancy in Absence of Lessee.** If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit but no house guests are permitted.
- 13.6 **Use of Common Elements and Association Property.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the common recreation or parking facilities during the lease term. The owner of a leased unit, who also leases a boat slip from the Association, may sublet the boat slip, but if so may not use the boat slip during the period that his condominium unit is leased.
- 13.7 **Regulation by Association.** All of the provisions of the Condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

14. **TRANSFER OF OWNERSHIP OF UNITS.** The purpose of this section is to maintain a quiet, tranquil and single-family oriented atmosphere, with the residents living in compatible co-existence with other financially responsible persons who are of like mind and acceptable both

in character and comportment. This objective is considered to be important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, transfer or disposal of any interest in a unit shall be subject to the provisions of this section.

14.1 Transfers.

- (A) Sale or Gift. No unit owner may dispose of a unit or any interest therein by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.2 below.
- (D) Ad Hoc Committee. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members; the Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

14.2 Procedures.

- (A) Notice to Association.
- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a condition for approval.
- (2) Devise, Inheritance or Other -Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights unless and until approved by the Board, but may sell the unit following the procedures in this Section.
- (3) Demand. With the notice required in subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the

Association shall furnish an approved alternate purchaser upon the same price and terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.

(4) **Failure to Give Notice.** If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) **Board Action.** Within twenty (20) days of receipt of the required notice and all information or appearances requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee.

If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) **Disapproval.**

(1) **With Good Cause.** Approval of the Association shall be withheld only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good causes for disapproval:

a. The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

b. The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

c. The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

d. The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

e. The person seeking approval has evidenced an attitude of disregard for association rules or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

f. The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium as more particularly set forth in paragraph 12.10 of this Declaration; or

g. The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.

(2) **Without Good Cause.** If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.2(A)(3), then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit upon the same price and terms as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing, real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the purchaser to specific performance or damages.

(3) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

14.3 Exception. The provisions of Sections 14.1 and 14.2 are not applicable to the acquisition of title by a mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

14.4 Unapproved Transfers. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14.5 Fees and Deposits Related to the Sale or Lease of Units. Whenever herein the Board's approval is required to allow the sale, lease, or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the approval, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee.

The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

15. **INSURANCE.** In order to adequately protect the unit owners, the Association, and all parts of the Condominium property and Association property that are required to be insured by the Association, insurance shall be maintained at all times in accordance with the following provisions:

15.1 **Duty and Authority to Obtain.** The Board of Directors shall obtain and maintain adequate insurance. In all insurance purchased by the Association, the name of the insured shall be the Association and the unit owners and their mortgagees (without naming them), as their interests shall appear, and the policy shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages where required by the mortgagee.

15.2 **Basic Insurance.** The Board of Directors shall annually procure insurance covering the building and improvements as well as all insurable Association property in an amount deemed reasonable by the Board of Directors. Pursuant to Section 718.111(11)(b), F.S., the word "building" does not include floor coverings, wall coverings, ceiling coverings, nor electrical fixtures, appliances, air conditioning or heating equipment, water heaters, or built-in cabinets located within a unit. Such insurance shall afford the following protection:

- (A) **Property.** The policy shall include extended coverage (including windstorm) and replacement cost coverage for loss or damage by fire, vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.
- (B) **Flood.** The policy shall include, if available, the replacement cost for each building and insurable improvements.
- (C) **Liability.** The policy shall include premises and operations liability coverage for bodily injury and property damage in such limits of liability and with such coverage as deemed reasonable by the Board of Directors of the Association, with cross-liability endorsements to cover liabilities of the unit owners as a group to a unit owner.
- (D) **Automobile.** The policy shall include automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles used in Association business, in such limits of liability and with such coverage as may be deemed reasonable by the Board of Directors of the Association.
- (E) **Workers' Compensation.** The Association shall maintain workers' compensation insurance as required by law.
- (F) **Fidelity Bonding.** The Association shall, at its cost, obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks, and the President, Secretary, and Treasurer of the Association, in reasonable amount, but in no event less than the minimum required by the Condominium Act from time to time.
- (G) **Directors and Officers Liability Insurance.** The Association shall obtain and maintain Directors and Officers Liability Insurance with reasonable limits of

liability using the broad form of policy coverage for all Directors and Officers and, if available, for committee members of the Association.

- (H) **Optional Coverage.** The Association may purchase and carry such other insurance coverage as the Board of Directors may reasonably determine from time to time to be in the best interest of the Association and unit owners.
- 15.3 **Description of Coverage.** A detailed summary of the coverage included in the master policies shall be available for inspection by unit owners on request.
- 15.4 **Waiver of Subrogation.** The Board of Directors shall endeavor to obtain, if available and where applicable, insurance policies which provide that the insurer waives its rights to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests.
- 15.5 **Shares of Insurance Proceeds.** All proceeds of insurance policies purchased by the Association shall be payable to the Association. The duty of the Association shall be to receive such proceeds and hold and disburse them for the purposes stated herein in the following shares:
- (A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as owner's share in the common elements.
- (B) **Units.** Proceeds on account of damage to units shall be held in as many undivided shares as there are damaged units, the share of each owner being in proportion to the cost of restoring the damage suffered by each such unit.
- (C) **Mortgagees.** If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests may appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages that it may hold against units except to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts on Association policies.
- 15.6 **Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Association shall be distributed for the benefit of the unit owners in the following manner:
- (A) **Cost of Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall first be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be retained by the Association.
- (B) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds after expenses shall be distributed to the beneficial owners. The remittances to unit owners and their mortgagees shall be payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

15.7 **Association as Agent.** The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

16. **RECONSTRUCTION OR REPAIR AFTER CASUALTY:** If any part of the Condominium property shall be damaged by casualty, a decision as to whether or not it shall be reconstructed or repaired shall be determined in the following manner:

16.1 **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 10.2 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair. The Association is not responsible for paying the deductible.

16.2 **Damage to Common Elements - Less than "Very Substantial".** Where loss or damage occurs to the common elements, but the loss is less than "Very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 **"Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage (or "major damage") shall mean loss or damage whereby more than fifty percent (50%) of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

(B) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds and reserves available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless at least seventy-five percent (75%) of the total voting interests shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.

(2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment will be required, then unless seventy-five percent (75%) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If seventy-five percent (75%) of the total voting interests approve the special assessment, the Board of Directors shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

(C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.2 above.

16.5 Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least seventy-five percent (75%) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

- 17.2 **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.
- 17.3 **Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.
- 17.4 **Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.
- 17.5 **Units Reduced but Habitable.** If the condemnation reduces the size of a unit and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following charges shall be effected in the Condominium:
- (A) **Restoration of Unit.** The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
 - (B) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
 - (C) **Adjustment of Shares in Common Elements.** If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.
- 17.6 **Unit Made Not Habitable.** If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:
- (A) **Payment of Award.** The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
 - (B) **Addition to Common Elements.** If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be

placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

- (C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

17.7 **Taking of Common Elements.** Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation, if any. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

17.8 **Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are made necessary by condemnation or eminent domain shall be accomplished by amending this Declaration and its recorded exhibits in accordance with Sections 17.5 and 17.6 above. Such amendment need be approved only by the owners of a majority of the units. The consent of lien holders is not required for any such amendment.

18. **TERMINATION:** The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

18.1 **Destruction.** In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or

major damage, the Condominium plan of ownership will be thereby terminated without agreement.

18.2 **Agreement.** The Condominium may be terminated at any time by the approval in writing of all of the owners of units in the Condominium, and by all mortgagees who have recorded their mortgages. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of units to which not less than eighty percent (80%) Of the common elements are appurtenant, and of the record owners of all mortgages upon units in the Condominium owned by institutional lenders and other mortgagees approved by the Association, are obtained not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the units of the non-approving owners during the period ending on the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

- (A) **Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the units to be purchased of an agreement to purchase signed by the record owners of units who will participate in the purchase. Such agreement shall indicate which units will be purchased by each participating owner and shall agree to purchase all of the units owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.
- (B) **Price.** The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.
- (C) **Payment.** The purchase price shall be paid in cash.
- (D) **Closing.** The sale shall be closed within ten (10) days following the determination of the sale price. If for any reason the purchase of a particular unit does not close, this shall not affect the validity of the purchase of the other units.

18.3 **Certificate.** The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its appropriate officers with the formality of a deed certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

18.4 **Shares of Owners After Termination.** After termination of the Condominium, the unit owners shall own the Condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the unit

owners. Such undivided shares of the unit owners shall be the same as the undivided shares in the common elements appurtenant to the owners' units prior to the termination.

18.5 Amendment. This section concerning termination shall not be amended without consent of all unit owners and of all owners of mortgages required to approve termination by agreement.

19. ENFORCEMENT:

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Condominium documents and the rules and regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the Condominium documents.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act, the Condominium documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and costs in any subsequent litigation, administrative proceeding, or arbitration.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under the law and the Condominium documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

19.5 Fines. The Board of Directors shall have the power on behalf of the Association to impose fines on unit owners who are in violation of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and/or Rules and Regulations of the

Association, pursuant to the Condominium Act and the procedures set forth in the Bylaws.

20. RIGHTS OF MORTGAGEES:

- 20.1 Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.
- 20.2 Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.
- 20.3 Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a Condominium unit as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee acquiring title shall be liable for only such share of common expenses or assessments attributable to the Condominium unit or chargeable to the former owner of the unit which came due prior to the mortgagee's acquisition of title as may be provided in the Condominium Act as amended from time to time. No acquirer of title to a Condominium unit by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.
- 20.4 Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.
- 20.5 Right to Inspect Books.** The Association shall make available to institutional mortgagees requesting same current copies of the Condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.
- 20.6 Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.
- 20.7 Lender's Notices.** Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:
- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
 - (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

21. **AMENDMENT OF DECLARATION.** All amendments to this Declaration shall be proposed and adopted in the following manner:

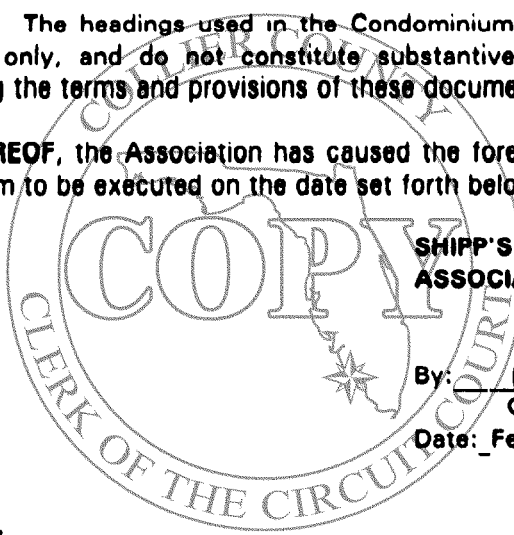
- 21.1 **Proposal.** Amendments to this Declaration may be proposed by a majority of the Board of Directors, or by written petition signed by at least one-fourth (1/4th) of the voting interests of the members.
- 21.2 **Procedure.** Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members (if such vote is necessary) not later than the next annual meeting for which proper notice can still be given.
- 21.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by at least three-fourths (3/4ths) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose.
- 21.4 **Certificate: Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.
- 21.5 **Proviso.** No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a unit shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.
- 21.6 **Correction of Errors.** If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

22. **MISCELLANEOUS**

- 22.1 **Severability.** The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not affect the remaining portions.
- 22.2 **Applicable Statutes.** The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act.

- 22.3 **Conflicts.** If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.
- 22.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless it is unreasonable. A written opinion rendered by the Association's legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.
- 22.5 **Exhibits.** There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.
- 22.6 **Singular, Plural and Gender.** Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.
- 22.7 **Headings.** The headings used in the Condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

IN WITNESS WHEREOF, the Association has caused the foregoing Amended and Restated Declaration of Condominium to be executed on the date set forth below.



SHIPP'S LANDING CONDOMINIUM ASSOCIATION, INC.

By: Charles Yorks
 Charles Yorks, as President
 Date: February 16, 2001

ATTEST:

By: [Signature]
 Secretary

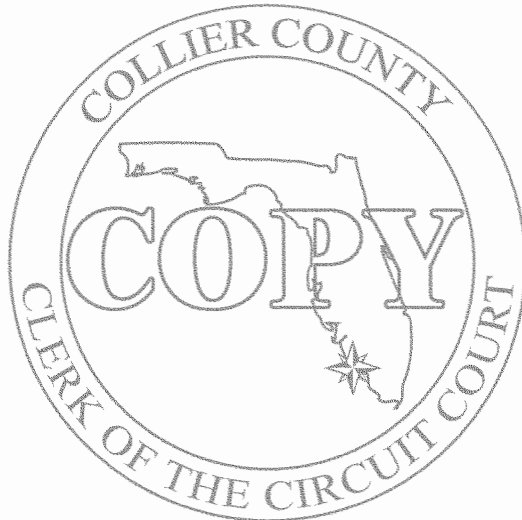
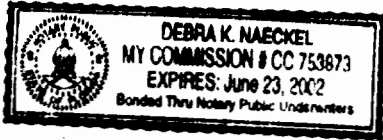
STATE OF FLORIDA
COUNTY OF COLLIER

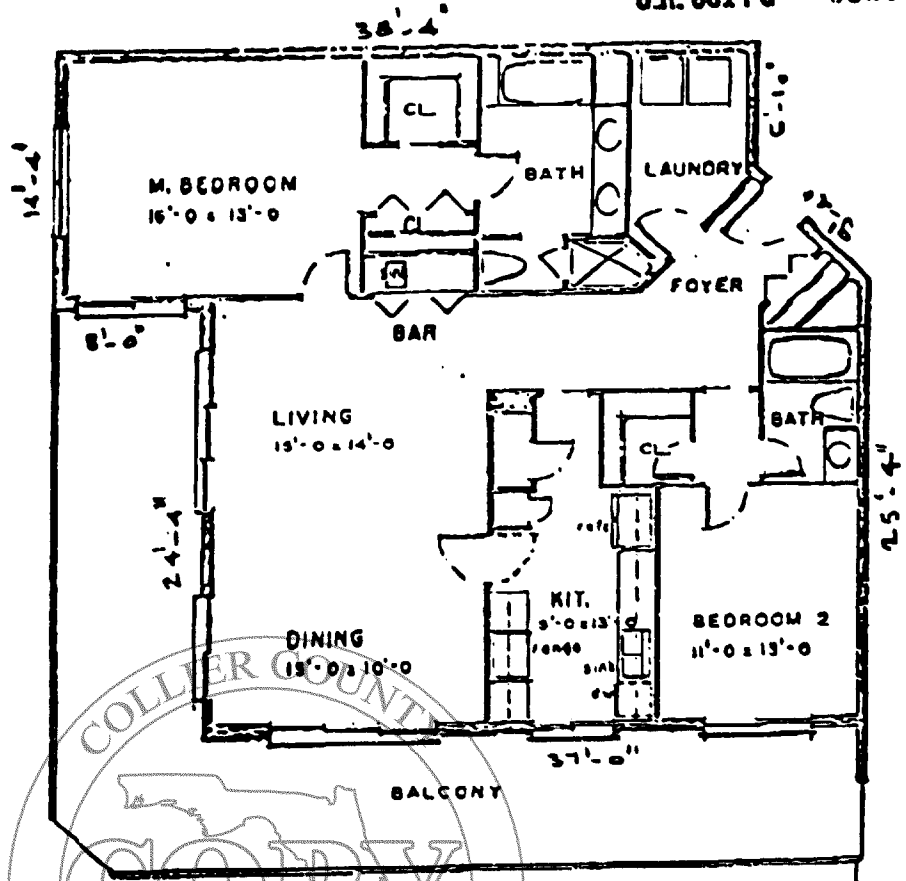
The foregoing instrument was acknowledged before me this 16th day of February, 2001, by Charles Yorks, as President and H. Lewis Gentry, Jr. as Secretary, of Shipp's Landing Condominium Association, Inc., who are personally known to me or who have produced identification and who did not take an oath.

My Commission Expires: 6/23/02

Debra K. Naeckel
NOTARY PUBLIC

Debra K. Naeckel
TYPED OR PRINTED NAME OF NOTARY





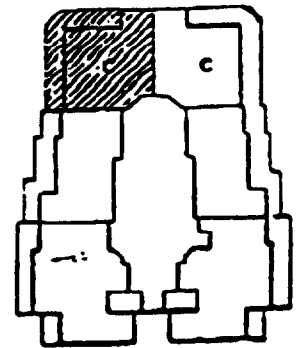
PHASE III
 TYPICAL FLOOR PLAN - TYPE 'C'

1452
 543

 1995

S.F. LIVING AREA
 S.F. BALCONY
 S.F. TOTAL

Units "22" & "23"



OR: 2784 PG: 2246

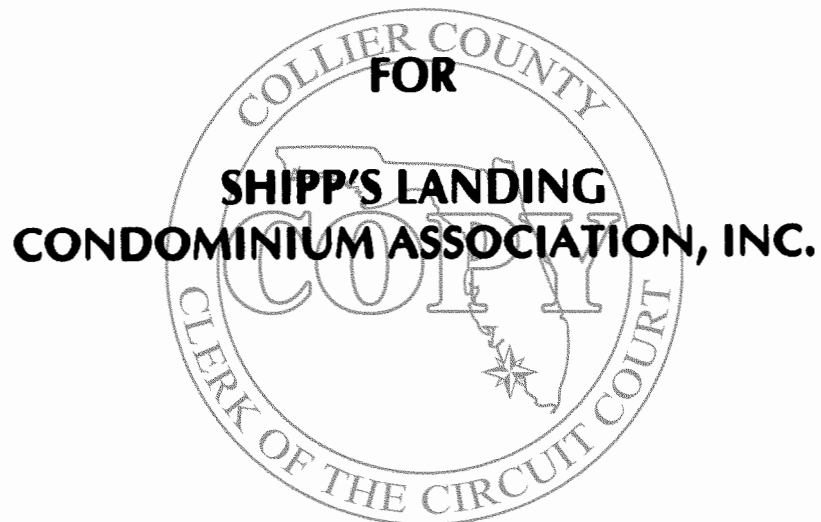
EXHIBIT "A"

SHIPP'S LANDING CONDOMINIUM ASSOCIATION, INC.
PARKING SPACE ASSIGNMENTS

| Space Number | Unit Number | Space Number | Unit Number | Space Number | Unit Number | Space Number | Unit Number | Space Number | Unit Number | Space Number | Unit Number |
|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
| 101 | 412 | 201 | 413 | 301 | 218 | 401 | 418 | 502 | 213 | 18 | 714 |
| 102 | 514 | 202 | 317 | 302 | 513 | 402 | 219 | 503 | 312 | 17 | 717 |
| 103 | 714 | 203 | 315 | 303 | 416 | 403 | 313 | 504 | 212 | 20 | 1920 |
| 104 | 414 | 204 | 217 | 304 | 215 | 404 | 318 | 505 | 618 | 21 | 1921 |
| 105 | 216 | 205 | 715 | 305 | 515 | 405 | 718 | 506 | 1421 | 22 | 1922 |
| 107 | 512 | 206 | 517 | 306 | 613 | 406 | 519 | 507 | 820 | 23 | 1923 |
| 108 | 614 | 207 | 214 | 307 | 615 | 407 | 518 | 508 | 220 | 24 | 1924 |
| 109 | 314 | 208 | 617 | 308 | 713 | 408 | 719 | 509 | 225 | 25 | 1925 |
| 110 | 318 | 209 | 712 | 309 | 612 | 409 | 419 | 510 | 320 | | |
| 111 | 616 | 210 | 415 | 310 | 516 | 410 | 325 | 511 | 620 | | |
| 112 | 619 | 211 | 417 | 311 | 319 | 411 | 720 | 512 | 1120 | | |
| 113 | 520 | 212 | 420 | 312 | 924 | 412 | 1221 | 513 | 1820 | | |
| 114 | 524 | 213 | 1622 | 313 | 1121 | 413 | 822 | 514 | 716 | | |
| 115 | 1825 | 214 | 123 | 314 | 623 | 414 | 1523 | 517 | 322 | | |
| 117 | 1521 | 216 | 421 | 316 | 1222 | 417 | 323 | 518 | 1620 | | |
| 118 | 1625 | 217 | 222 | 317 | 1723 | 418 | 625 | 519 | 725 | | |
| 119 | 1721 | 218 | 925 | 318 | 224 | 419 | 1823 | 520 | 1023 | | |
| 120 | 624 | 219 | 1422 | 319 | 723 | 420 | 622 | 521 | 522 | | |
| 121 | 521 | 220 | 1423 | 320 | 1822 | 421 | 1022 | 522 | 321 | | |
| 122 | 1220 | 221 | 1525 | 321 | 721 | 422 | 423 | 523 | 823 | | |
| 123 | 1621 | 222 | 1224 | 322 | 621 | 423 | 921 | 524 | 1824 | | |
| 124 | 1123 | 223 | 1021 | 323 | 1724 | 424 | 1020 | 525 | 1624 | | |
| 125 | 1424 | 224 | 1522 | 324 | 424 | 425 | 1524 | 526 | 122 | | |
| 126 | 922 | 225 | 1623 | 325 | 1725 | 426 | 1520 | 527 | 1223 | | |
| 127 | 821 | 226 | 920 | 326 | 1425 | 427 | 525 | 528 | 221 | | |
| 128 | 1720 | 227 | 324 | 327 | 1420 | 428 | 1122 | 529 | 1125 | | |
| 129 | 1024 | 228 | 1025 | 328 | 923 | 429 | 1124 | 530 | 1821 | | |
| 130 | 223 | 229 | 824 | 329 | 422 | 430 | 523 | 531 | 825 | | |
| | | 230 | 425 | 330 | 1722 | 431 | 724 | | | | |
| | | 231 | 722 | 331 | 1225 | | | | | | |

Exhibit "C"

AMENDED AND RESTATED BYLAWS

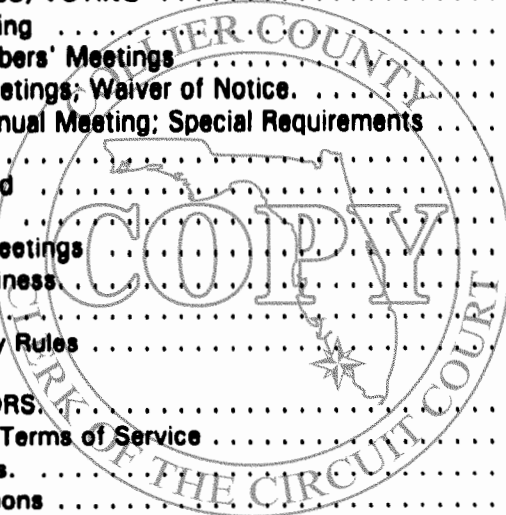


John D. Humphreville, Esq.
QUARLES & BRADY LLP
4501 Tamiami Trail North, Ste. 300
Naples, FL 34103
(941) 262-5959

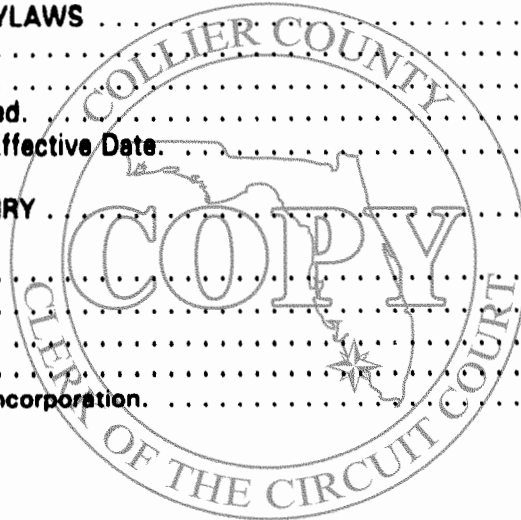
AMENDED AND RESTATED BYLAWS
OF
SHIPP'S LANDING CONDOMINIUM ASSOCIATION, INC.

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NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.

AMENDED AND RESTATED BYLAWS

OF

SHIPP'S LANDING CONDOMINIUM ASSOCIATION, INC.

1. **GENERAL.** These are the Amended and Restated Bylaws of Shipp's Landing Condominium Association, Inc., (the "Association"), a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.
 - 1.1 **Principal Office.** The principal office of the Association is at 1090 South Collier Boulevard, Marco Island, Florida 34145, or at such other location as may be determined by the Board of Directors.
 - 1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.
 - 1.3 **Definitions.** The definitions set forth in Section 4 of the Amended and Restated Declaration of Condominium to which these Bylaws are attached as Exhibit "C" shall apply to terms used in these Bylaws.
2. **MEMBERS.**
 - 2.1 **Qualifications.** The members of the Association shall be the record owners of legal title to the units. A unit may be owned by one natural person. Co-ownership of units is permitted. If the co-owners are other than husband and wife, one natural person shall be designated as the primary occupant. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person; however, one natural person shall be designated as the primary occupant. One natural person shall be designated as the primary occupant if the unit is owned through a trust or corporation or other entity. A unit may be subject to a life estate, either by operation of law or by voluntary conveyance. In that event, the occupancy of the unit shall be as if the life tenant were the only owner. If there is more than one life tenant, their occupancy shall be determined in the manner as if the life tenants were co-owners of the unit. In the case of a unit subject to an Agreement for Deed, the party in possession of the unit shall be deemed the owner of the unit for purposes of determining voting and use rights. Membership shall become effective upon the recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member, approval by the Board of Directors as provided in Section 14 of the Declaration of Condominium, delivery of a copy of the recorded deed or other instrument evidencing title, and delivery to the Association, if required, of a written designation of the primary occupant.

- 2.2 Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person or trustee, his right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more natural persons or trustees, that unit's vote may be cast by the primary occupant. If the owner of a unit is a corporation, the vote of that unit shall be cast by the primary occupant. If the owner of a unit is a partnership, the vote may be cast by the primary occupant.
- 2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.
- 2.4 Change of Membership.** Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time, the membership of the prior owner shall be terminated automatically.
- 2.5 Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS; VOTING.

- 3.1 Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, at a place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting the ballots cast in the annual election of Directors shall be counted and results announced.
- 3.2 Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.
- 3.3 Notice of Meetings; Waiver of Notice.** Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for informing the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the meeting. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the

beginning of the meeting. A member may waive notice of any meeting at any time, but only by written waiver.

- 3.4 Notice of Annual Meeting: Special Requirements.** Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the Condominium property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each owner, and an affidavit of the officer, manager, or other person making such mailing, or a U.S. Postal Service certificate, shall be retained in the Association records as proof of mailing. Notice of the annual meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained.
- 3.5 Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3rd) of the votes of the entire membership.
- 3.6 Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Condominium documents.
- 3.7 Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members' meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies must be used for votes taken to waive reserves or financial statement requirements, to amend the Condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members; however, limited proxies need not be used for such votes if any person entitled to attend and vote at a members' meeting is in attendance and an alternative means of voting is available, such as, but not limited to, voice vote, hand vote, ballot vote and other like methods. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary before the appointed time of the meeting or adjournment thereof. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.
- 3.8 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is present.

3.9 Order of Business. The order of business at members' meetings shall be substantially as follows:

- (A) Counting of ballots for annual election of directors (if necessary)
- (B) Call of the roll or determination of quorum
- (C) Reading or disposal of minutes of last members meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.10 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives and Board members at all reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be seven (7). All Directors shall be elected for two (2) year terms. A Director will serve until his successor is elected, unless he sooner resigns or is recalled as provided below. Directors shall be elected by the members as provided in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.4 below. The Association has an established election procedure to insure that Directors serve staggered terms in order to provide continuity of experience on the Board, which procedure shall continue and be unaffected by the recording of these Amended and Restated Bylaws.

4.2 Qualifications. The Board shall be comprised of two (2) Directors each from Phases One and Two, and three (3) Directors from Phase Three. Each Director must be a member or the spouse of a member.

4.3 Annual Elections. On the day of each annual meeting the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless balloting is dispensed with as provided by law. Not less than sixty (60) days before the annual election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a

candidate for the Board may qualify as such by giving written notice to the Association not less than forty (40) days before the annual election. If the number of candidates exceeds the number of Directors to be elected, at least fourteen (14) days before the election Association shall mail or deliver a second notice of the election to all unit owners entitled to vote then together with voting instructions and ballots which shall list all qualified candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8-1/2 inches by 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the election, with mailing of the ballot, with the costs of mailing and copying to be borne by the Association. Where an election is required, Directors from each Phase shall be elected by a plurality of the votes of the members from that Phase cast in the annual election, provided at least twenty percent (20%) of the eligible voters cast ballots in the election. Proxies may not be used in the election. Voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot.

All ballots received prior to the time of the annual meeting shall be mailed or delivered to an address specified by the Board of Directors, where they will be received by a custodian who is either an independent third party such as an attorney or accountant, or a committee appointed by the Board composed entirely of persons who are not serving as Directors or running for election. The custodian of the ballots shall deliver the ballots to the site of the advance verification meeting held on the day of the election prior to the meeting of the owners, where the ballots will be turned over to a committee as set forth in Rule 61B-23.0021(10)(b), Florida Administrative Code, for advance verification.

4.4 Vacancies on the Board. If the office of any director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected, from the same phase as the vacating director, as follows:

- (A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term.
- (B) If a vacancy occurs as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled in accordance with the Condominium Act, governing the method of selecting successors, as well as the operation of the Association during the period of recall but prior to the designation of successor Directors sufficient to constitute a quorum.

4.5 Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the

signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given.

- 4.6 Organizational Meeting.** The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be determined by the Board.
- 4.7 Other Meetings.** Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.
- 4.8 Notice to Owners.** Meetings of the Board of Directors shall be open to members, except meeting with Association counsel with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice. Notices of all Board meetings together with an agenda shall be posted conspicuously on the condominium property at least forty-eight (48) hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting where non-emergency special assessments against units are to be considered for any reason shall be mailed or delivered to the unit owners and posted conspicuously on the condominium property not less than fourteen (14) days prior to the meeting. An affidavit executed by the person making the mailing shall be filed among the official records of the Association as proof of mailing. Notice of any Board meeting a which a budget will be adopted or amended shall conform to the requirements set forth in Section 6.2 below. The right of owners to attend Board meetings includes the right to participate subject to the rules of the Association as follows:
- (A) Roberts Rules of Order (latest edition) shall govern the conduct of the Association meeting when not in conflict with the Declaration of Condominium, the Articles of Incorporation or Bylaws.
 - (B) After a meeting of the Board is called to order and a quorum established, the next order of business shall be a discussion by the Board of items appearing on the agenda, in the order in which they appear on the agenda.
 - (C) A unit owner wishing to speak with regard to a specific agenda item may do so only while that item is being discussed by the Board and he or she must first raise his or her hand and wait to be recognized by the Chair.
 - (D) While a unit owner is speaking he or she must address the Chair, no one else is permitted to speak at the same time.
 - (E) A unit owner may speak only once, for not more that three (3) minutes, on each agenda item.
 - (F) The Chair may, by asking if there be any objection from the Board members, and hearing none, permit a unit owner to speak for longer than three (3) minutes, or to speak more than once on the same subject. The objection, if any, will be decided by a vote of the Board.

(G) The Chair will have the sole authority and responsibility to see to it that all unit owner participation is within the limits specified and is relevant to the agenda items.

- 4.9 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.
- 4.10 **Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote, or participate, by proxy at Board meetings.
- 4.11 **Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.
- 4.12 **Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn or recess the meeting to be reconvened at a later specific time and date. At such reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.
- 4.13 **The Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.
- 4.14 **Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.
- 4.15 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. All committees shall hold their meetings and give notice of such meetings with the same formalities as required for Board meetings.

5. **OFFICERS.**

- 5.1 **Officers and Elections.** The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by a majority of the Board of Directors. The election of officers may be by secret ballot. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.
- 5.2 **President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.
- 5.3 **Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.
- 5.4 **Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for that purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.
- 5.5 **Treasurer.** The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.
6. **FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

- 6.1** Depository. The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market trusts, certificates of deposit, U.S. Government Securities, and other similar investment vehicles.
- 6.2** Budget. The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.
- 6.3** Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon the remaining estimated useful life and replacement cost of each item. The Association may adjust replacement reserve assessments annually to reflect any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. These reserves shall be funded unless the members subsequently determine by majority vote of the voting interest present in person or voting by limited proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interest present in person or voting by limited proxy at a members' meeting called for that purpose. Furthermore, these reserves shall not be commingled with the operating funds unless combined for investment purposes (Section 718.112(2)(f), Florida Statutes; Rule 61B-22.005, Florida Administrative Code).
- 6.4** Other Reserves. In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these accounts is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so funded shall be shown in the proposed annual operating budget each year. These funds may be spent for any purpose approved by the Board.
- 6.5** Assessments. Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to

the members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each unit's next due quarterly installment.

- 6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered, discussed or proposed shall be given as provided in Section 4.8 above, and the notice to the owners of the levy of the assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.
- 6.7 Fidelity Bonds.** The Treasurer, and all other officers who are authorized to sign checks, and all other persons having access to or control of Association funds, shall be bonded in such amounts as may be required by the Condominium Act or otherwise determined by the Board of Directors. The premiums on such bonds shall be a common expense.
- 6.8 Financial Statements.** Not later than ninety (90) days after the close of each fiscal year, the Board shall cause to be prepared, and shall distribute to the owners of each unit, financial statements meeting the minimum standards of Section 718.111(14), Florida Statutes, showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts, unless waived in accordance with Section 718.111(14), Florida Statutes; in which case, not later than sixty (60) days after the close of each fiscal year, the Board shall cause to be prepared, and shall distribute to the owners of each unit, a financial report meeting the minimum standards of Section 718.111(13), Florida Statutes, showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts.
- 6.9 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January and end on the last day of December of each calendar year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.
- 7. RULES AND REGULATIONS; USE RESTRICTIONS.** The Board of Directors may, from time to time, adopt, amend and rescind administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the

promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced. The rules and regulations need not be recorded in the public records.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following provisions shall apply:

8.1 Fines. The Board of Directors may levy reasonable fines against units whose owners commit violations of the Condominium Act, the provisions of the Condominium documents or Association rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law. The procedure for imposing such fines shall be as follows:

(A) The party against whom the fine is sought to be levied shall be afforded an opportunity for a hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws or Rules and Regulations which have allegedly been violated;
- (3) A short and plain statement of the matters asserted by the Association;
- (4) The amount of any proposed fine.

(B) At the hearing, the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be conducted before a panel of three (3) non-Director unit owners appointed by the Board. If the committee, by majority vote, does not agree with the fine, it may not be levied.

8.2 Correction of Health and Safety Hazards. Any violations which are deemed by the Board of Directors to be a hazard to the public health or safety must be corrected immediately as an emergency matter by the Association, and the cost thereof shall be charged to the unit owner.

8.3 Mandatory Non-Binding Arbitration. In the event of any "dispute" as defined in Section 718.1255(1), Florida Statutes, between a unit owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration or alternative mediation under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

- 8.4 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the Condominium property free from unreasonable restraint and annoyance.
- 9. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:
- 9.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition signed by at least one-fourth (1/4th) of the voting interests of the members.
- 9.2 Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given.
- 9.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests present in person or by proxy at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.
- 9.4 Recording: Effective Date.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded.
- 10. UNIT OWNER INQUIRY.** When a unit owner files a written inquiry by certified mail, with the Board of Directors, the Board shall respond in writing to the owner within thirty (30) days of receipt of the inquiry. The Board's response shall give either a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division of Condominiums. If the Board requested advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing, a substantive response to the inquirer. If a legal opinion is requested from the Association's counsel, the Board shall, within sixty (60) days after receipt of the inquiry, provide in writing a substantive response to the inquirer. Failure to provide a substantive response to the inquirer as provided precludes the Board from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding or arbitration arising out of the inquiry. The Association is only obligated to respond to one (1) written inquiry per unit in any given thirty (30) day period. Any additional inquiry or inquiries must be responded to in the subsequent thirty (30) day period or periods, as applicable.

11. **MISCELLANEOUS.**

- 11.1 **Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.
- 11.2 **Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.
- 11.3 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.
- 11.4 **Articles of Incorporation.** The Articles of Incorporation of the Association may be amended in the manner provided therein.

Adopted February 8, 2001

